

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE ESTATE OF NELSON MARTINEZ-MENDEZ, by and through SUZANNE RUIZ, Personal Representative of the Estate; and MARIA CLEOFE MENDEZ, Mother of Nelson Martinez-Mendez,

## Plaintiffs,

V.

CITY OF BELLEVUE; JIM MONTGOMERY, in his capacity as Chief of Police for the City of Bellevue, and as an individual; and MICHAEL HETLE, in his capacity as a police officer for the City of Bellevue, and as an individual,

No. C04-1742Z

## ORDER

### Defendants.

This case comes before the Court on The City of Bellevue's and Chief Montgomery's Motion for Summary Judgment, docket no. 26. Having considered the briefs in support of and in opposition to the motion, the Court hereby enters the following Order:

1. The Court GRANTS The City of Bellevue's and Chief Montgomery's Motion for Summary Judgment, docket no. 26, and DISMISSES all claims against The City of Bellevue and Chief Montgomery with prejudice for the following reasons:

(a) Plaintiff Maria Cleofe Mendez’ (“Ms. Mendez”) Fourth Amendment claim, for lack of standing, see Alderman v. United States, 394 U.S. 165, 174 (1969) and Moreland v. Las Vegas Metro. Police Dep’t, 159 F.3d 365, 369 (9th Cir. 1998), and for Ms. Mendez’ failure to prosecute. See Fed. R. Civ. P. 56(e) (non-moving party may not “rest upon the mere allegations or denials of the . . . pleading”); Local Rule 7(b)(2) (“If a party fails to file

ORDER 1-

1 papers in opposition to a motion, such failure may be considered by the court as an  
 2 admission that the motion has merit.”).

3       (b) Plaintiff Estate of Nelson Martinez-Mendez’ (the “Estate”) substantive due  
 4 process claims, for the Estate’s failure to prosecute. See Fed. R. Civ. P. 56(e); Local Rule  
 5 7(b)(2).

6       (c) The Plaintiffs’ procedural due process claims, for Plaintiffs’ failure to  
 7 prosecute. See Fed. R. Civ. P. 56(e); Local Rule 7(b)(2).

8       (d) All 42 U.S.C. § 1983 (“Section 1983”) claims against the City of Bellevue, for  
 9 Plaintiffs’ failure to provide any evidence that any constitutional violations were directly  
 10 caused by a municipal policy or custom. See Board of County Comm’rs v. Brown, 520 U.S.  
 11 397, 403-04 (1997); Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 694-95 (1978); Trevino v.  
 12 Gates, 99 F.3d 911, 918 (9th Cir. 1996).

13       (e) All Section 1983 claims against Chief Montgomery, for Plaintiffs’ failure to  
 14 provide any evidence that he had any personal involvement in the alleged constitutional  
 15 deprivation, or that there was a sufficient causal connection between his conduct and the  
 16 alleged constitutional violation. See Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989).  
 17 Plaintiffs’ conclusory allegations, without factual support, are insufficient to defeat summary  
 18 judgment. See Nat’l Steel Corp. v. Golden Eagle Ins. Co., 121 F.3d 496, 502 (9th Cir.  
 19 1997).       (f) All Section 1983 claims against Chief Montgomery because he is  
 20 entitled to qualified immunity under Section 1983. Plaintiffs did not oppose Defendants’  
 21 motion for qualified immunity under Section 1983. See Fed. R. Civ. P. 56(e); Local Rule  
 22 7(b)(2).

23       (g) Ms. Mendez’ state law claim under RCW 4.24.010 against Chief Montgomery  
 24 because he is entitled to qualified immunity under state common law. Plaintiffs did not  
 25 oppose Defendants’ motion for qualified immunity under state common law. See Fed. R.  
 26 Civ. P. 56(e); Local Rule 7(b)(2).

1 The only defendant that remains in this case is Officer Hetle. The Court does not  
2 decide whether Officer Hetle acted objectively reasonable under the Fourth Amendment.  
3 See Graham v. Connor, 490 U.S. 386, 397-99 (1989); Tennessee v. Garner, 471 U.S. 1, 7  
4 (1985). The Court also does not decide whether Officer Hetle acted with deliberate  
5 indifference under the Fourteenth Amendment. See Byrd v. Guess, 137 F.3d 1126, 1134 (9th  
6 Cir. 1998). Discovery is not complete. Officer Hetle has not been deposed. The issues have  
7 not been adequately briefed.

8 (2) The Court DENIES Plaintiffs' Fed. R. Civ. P. 56(f) Motion, docket no. 39. It  
9 only relates to Ms. Mendez' state law claim under Washington state law, RCW 4.24.010. As  
10 noted above, Chief Montgomery is entitled to qualified immunity against Ms. Mendez' state  
11 law claim.

12 (3) The Court DENIES Defendants' Motion to Strike, docket no. 41.

## 13 || IT IS SO ORDERED.

14 DATED this 19th day of October, 2005.

15  
16   
17 \_\_\_\_\_  
Thomas S. Zilly  
United States District Judge

ORDER 3-